

Congress of the United States
Washington, DC 20515

August 17, 2005

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Fine:

As the Ranking Member of the Committee on the Judiciary and a Member of the Committee on Appropriations, both of which have oversight jurisdiction over the U.S. Department of Justice, we write to request that your Office immediately investigate whether then-Attorney General John D. Ashcroft violated explicit rules on conflicts of interest when he failed to recuse himself from, and in fact was briefed on, the CIA name leak investigation despite his personal connection to Karl Rove, a person of interest to investigators. This investigation would not conflict with the investigation by Special Prosecutor Patrick J. Fitzgerald into the actual leak; instead, it would focus on Mr. Ashcroft's failure to recuse himself at the appropriate time in the case. Furthermore, the investigation into the recusal delay would be a logical extension of the request that you also investigate the Department's failure to comply with proper procedures by not ensuring the preservation of documents and other evidence connected with the leak.¹

Early in the Department's investigation of who had leaked a covert CIA operative's identity to the media, it became clear that Karl Rove, a senior advisor to the President, was receiving public attention as someone who may have been involved in the crime.² We have now learned that, according to law enforcement officials close to the investigation, Mr. Rove failed to disclose to the FBI that he had ever spoken with *Time*'s Matthew Cooper, a reporter involved in the case.³ These officials also have indicated that then-Attorney General Ashcroft was personally and privately briefed on the Rove interview.⁴

¹See Letter from Ten Members of Congress to the Honorable Glenn A. Fine, Inspector General, U.S. Dep't of Justice (July 26, 2005).

²See Mike Allen & Dana Milbank, *Bush Vows Action if Aides had Role in Leak*, WASH. POST, Sept. 30, 2003, at A1; Eric Lichtblau & Richard W. Stevenson, *White House Denies a Top Aide Identified an Officer of the CIA*, N.Y. TIMES, Sept. 30, 2003, at A1; Mike Allen & Dana Priest, *Bush Administration is Focus of Inquiry*, WASH. POST, Sept. 28, 2003, at A1.

³Murray Waas, *What Now, Karl? Rove and Ashcroft Face new Allegations in the Valerie Plame Affair*, VILLAGE VOICE, Aug. 13, 2005.

⁴*Id.*

These new disclosures are troubling because, at the time of these events, Mr. Ashcroft had known personal and political connections to Mr. Rove. Mr. Rove was an adviser to Mr. Ashcroft during the latter's political campaigns, earning almost \$750,000 for his services. Mr. Rove also had urged the President to nominate Mr. Ashcroft to be Attorney General after Mr. Ashcroft lost his Senate re-election campaign to the deceased Mel Carnahan. The fact that Mr. Ashcroft eventually recused himself demonstrates that there in fact were conflicts of interest with his continued involvement in the investigation. The fact that he did not recuse himself early on and was briefed on the matter may well have violated ethical rules and guidelines.

Existing law and rules of professional conduct govern when Department attorneys must recuse themselves from particular investigations. Federal law requires the Attorney General to promulgate rules mandating the disqualification of *any* officer or employee of the Justice Department "from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof."⁵ Pursuant to this requirement, the Department has promulgated regulations stating that:

no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with: (1) any person . . . substantially involved in the conduct that is the subject of the investigation or prosecution; or (2) any person . . . which he knows or has a specific and substantial interest that would be affected by the outcome of the investigation or prosecution.⁶

In this case, Mr. Ashcroft would have been prohibited from involvement in the leak investigation under both provisions. His relationships with the President and Mr. Rove consists of both personal and political connections with individuals who might have been the investigation's subjects. At a minimum, his friend, Mr. Rove, had a "specific and substantial interest that would be affected by the outcome" in that his entire political legacy would be tarnished if he were implicated in the leak.

To reiterate the importance of preventing conflicts of interest, the Justice Department has further explicated the guidelines in its U.S. Attorneys' Manual. The Attorneys' Manual provides that:

When United States Attorneys, or their offices, become aware of an issue that could require a recusal in a criminal or civil matter or case as a result of a personal interest or professional relationship with parties involved in the matter, they must contact General Counsel's Office (GCO), EOUSA. The requirement of recusal

⁵28 U.S.C. § 528 (emphasis added).

⁶28 C.F.R. § 45.2.

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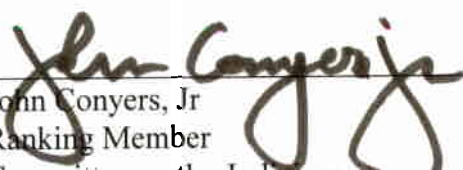
does not arise in every instance, but only where a conflict of interest exists or there is an appearance of a conflict of interest or loss of impartiality.⁷


In the leak investigation, Mr. Ashcroft clearly had a professional relationship with a party involved the matter. His failure to have recused himself earlier may have been an instance of "too little, too late," as the conflict may have impeded the investigation.

Furthermore, rules of professional conduct bar lawyers such as Mr. Ashcroft from matters in which they have conflicts of interest. Because Department attorneys must follow the ethical rules of the bar in which they practice,⁸ as an official at Main Justice he would have been obligated to comply with the District of Columbia Bar's Rules of Professional Conduct. These Rules state that, without consent, a lawyer shall not represent a client if "the lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests."⁹ In the instant situation, Mr. Ashcroft clearly had a personal connection to Mr. Rove that would have interfered with proper oversight of the case.

We look forward to hearing whether you will open such an investigation and, if not, the reason for your decision. Please reply to Rep. Conyers at 2142 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6504; fax: 202-225-4423) and to Rep. Hinchey at 2431 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-6335; fax: 202-226-0774).

Sincerely,


John Conyers, Jr.
Ranking Member
Committee on the Judiciary


Maurice Hinchey
Member
Committee on Appropriations

⁷U.S. DEP'T OF JUSTICE, U.S. ATTORNEYS' MANUAL § 3-2.170.

⁸28 U.S.C. § 530B.

⁹DISTRICT OF COLUMBIA BAR, RULES OF PROFESSIONAL CONDUCT 1.7(b)(4). The American Bar Association mimics this guideline in Rule 1.7 of its own Model Rules of Professional Conduct. See AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONDUCT 1.7(a)(2).